

THEODORE V. WELLS JR. (Admitted *Pro Hac Vice*)
MOSES SILVERMAN (Admitted *Pro Hac Vice*)
MICHAEL E. GERTZMAN (Admitted *Pro Hac Vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

MICHAEL J. SHEPARD (State Bar No. 91281)
MICHAEL A. ZWIBELMAN (State Bar No. 224783)
HELLER EHRMAN LLP
333 Bush Street
San Francisco, California 94104-2878
Telephone: (415) 772-6000
Facsimile: (415) 772-6268

Attorneys for Defendant
CHARLES W. McCALL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES W. McCALL and JAY M.
LAPINE,

Defendants.

Case No.: CR-00-0505-MJJ

**STIPULATION AND [PROPOSED]
ORDER MODIFYING BRIEFING
SCHEDULE FOR DEFENDANTS
McCALL'S AND LAPINE'S POST-
TRIAL MOTIONS**

The Honorable Martin J. Jenkins
Date: April 12, 2007
Time: 2:00 p.m.
Courtroom 11, Nineteenth Floor

1 The United States and defendants Charles W. McCall and Jay M. Lapine, through
2 their respective counsel, stipulate and agree as follows:

3 **RECITALS**

4 1. On June 4, 2003, this Court unsealed a second superseding indictment (“the
5 Indictment”) containing charges against Mr. McCall and Mr. Lapine. The charges, which
6 relate to accounting irregularities reported to the market by the McKesson Corporation in
7 April 1999, include conspiracy to commit securities fraud, fraud in connection with the
8 purchase and sale of securities, filing false documents with the United States Securities and
9 Exchange Commission, circumventing internal accounting controls, and falsifying books,
10 records, and accounts.

11 2. Trial in this matter began on September 11, 2006.

12 3. Mr. McCall and Mr. Lapine moved for judgments of acquittal pursuant to
13 Federal Rule of Criminal Procedure 29 at the close of the government’s case-in-chief and
14 renewed the motions at the close of evidence.

15 4. The case was submitted to the jury on Friday, October 27, 2006.

16 5. On Friday, November 3, 2006, the jury returned verdicts of not guilty as to
17 Mr. McCall and Mr. Lapine on Count 1 of the Indictment, Conspiracy to Commit Securities
18 Fraud, 18 U.S.C. § 371. The jury was unable to reach a verdict as to Mr. McCall or Mr.
19 Lapine on any of the remaining six counts, and the Court declared a mistrial as to Counts 2,
20 4, 5, 6, 7 and 8 of the Indictment and discharged the jury.

21 6. Pursuant to Federal Rule of Criminal Procedure 29, Mr. McCall and Mr.
22 Lapine would have been required to file Motions for Judgements of Acquittal, if either
23 sought to make such a motion, on or before November 10, 2006, within seven days after the
24 Court discharged the jury.

1 7. By a Stipulation and Proposed Order dated November 8, 2006, the
2 undersigned parties stipulated and agreed that, with this Court's permission, the briefing
3 schedule for Mr. McCall's and Mr. Lapine's Motions for Judgments of Acquittal, if either
4 brought such a motion, would be as follows: Mr. McCall's and Mr. Lapine's motions
5 would be due on or before December 22, 2006; the government's opposition would be due
6 on or before January 26, 2007; and Mr. McCall's and Mr. Lapine's reply briefs would be
7 due on or before February 23, 2007. The motions would be heard, with the Court's
8 permission, on March 8, 2007, in conjunction with the status conference scheduled in this
9 matter.

10 8. The Court entered an Order on November 14, 2006, setting the briefing
11 schedule on Mr. McCall's and Mr. Lapine's Motions for Judgments of Acquittal as set forth
12 above.

13 9. In order to accommodate the professional schedules of counsel, all
14 undersigned parties now agree that, with this Court's permission, the briefing schedule for
15 Mr. McCall's and Mr. Lapine's Motions for Judgments of Acquittal, or other post-trial
16 motions, if any, shall be as follows: Mr. McCall's and Mr. Lapine's motions would be due
17 on or before February 2, 2007; the government's opposition would be due on or before
18 March 8, 2007; and Mr. McCall's and Mr. Lapine's reply briefs would be due on or before
19 April 6, 2007. The motions would be heard, with the Court's permission, on April 12, 2007
20 at 2:00 p.m. or at the Court's earliest convenience. The parties also agree that the status
21 conference scheduled for March 8, 2007 should proceed as planned.

STIPULATION

Based on the foregoing, IT IS HEREBY STIPULATED AND AGREED that, with this Court's permission, Mr. McCall's and Mr. Lapine's Motions for Judgments of Acquittal, or other post-trial motions, if any, shall be due on or before February 2, 2007; the government's opposition shall be due on or before March 8, 2007; and Mr. McCall's and Mr. Lapine's reply briefs shall be due on or before April 6, 2007. The motions, if brought, shall be heard on April 12, 2007 at 2:00 p.m. or at the Court's earliest convenience. The status conference scheduled for March 8, 2007 should proceed as planned.

IT IS SO STIPULATED AND AGREED.

DATED: December 15, 2006

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON, &
GARRISON LLP

By /s/ Theodore V. Wells, Jr.

Theodore V. Wells Jr.

-- and --

HELLER EHRMAN LLP

By /s/ Michael J. Shepard

Michael J. Shepard

Attorneys for Defendant
CHARLES W. MCCALL

1
2 DATED: December 15, 2006

UNITED STATES OF AMERICA

3
4 By /s/ Timothy P. Crudo

5 Timothy P. Crudo
6 Brian J. Stretch
7 Office of the United States Attorney
8 450 Golden Gate Avenue
9 Eleventh Floor
10 San Francisco, CA 94102
11 (415) 436-7200
12 (415) 436-7234 FAX

13 Attorneys for the United States

14 DATED: December 15, 2006

TOPEL & GOODMAN

15 By /s/ Marcus S. Topel

16 Marcus S. Topel
17 Lyn Agre
18 Topel & Goodman
19 832 Sansome Street, Fourth Floor
20 San Francisco, CA 94111
21 (415) 421-6140
22 (415) 398-5030 FAX

23 Attorneys for Defendant
24 JAY M. LAPINE

25 Pursuant to the foregoing stipulation, IT IS SO ORDERED.

26 DATED: December 21, 2006

27 
28 THE HONORABLE MARTIN J. JENKINS
United States District Judge